

CO-OPERATIVE STEWARDSHIP AGREEMENT FOR CONSERVATION EASEMENT

This Co-operative Stewardship Agreement for Conservation Easement (Agreement) is made effective and entered into as of this _____ day of _____, 20____, by and among:

The PERMITTEE _____, (*name*), a married / single individual(s) (circle one) or Michigan, corporation, partnership, municipality, limited liability company (circle one), whose address is:

The GRANTOR _____ (*Easement Holder if not the Permittee*), whose address is: _____

The STEWARD _____ (*Name*) whose address is: _____

The GRANTEE, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) whose address is P.O. Box 30458, Lansing, Michigan 48909-7958 or Constitution Hall, 1st Floor South, 525 West Allegan Street, Lansing, Michigan 48933.

Preamble:

The DEQ may in certain circumstances accept preservation of existing wetlands as mitigation for permitted wetland impacts, if the DEQ determines that all of the following conditions are met:

- A. The wetlands to be preserved perform exceptional physical or biological functions that are essential to the preservation of the natural resources of the state or the preserved wetlands are an ecological type that is rare or endangered.
- B. The wetlands to be preserved are under a demonstrable threat of loss or substantial degradation due to human activities that are not under the control of the applicant and that are not otherwise restricted by state law.
- C. The preservation of the wetlands as mitigation will ensure the permanent protection of the wetlands that would be otherwise lost or substantially degraded.

Recitals:

WHEREAS, the Permittee, as a condition of DEQ Permit ____-____-____-P, (Exhibit A) granted a Conservation Easement (Exhibit B) to the DEQ over approximately _____ acre(s) of Property.

WHEREAS, (*For Wetland Banks only*) *The Bank Sponsor, pursuant to an DEQ Wetland Banking Agreement, submitted a Management Plan that requires monitoring of the Conservation Easement premises, to ensure the Wetland Bank remains permanently protected and continues to evolve as a natural and undeveloped wetland area.*

WHEREAS, the DEQ, pursuant to Permit conditions (or *the Wetland Banking Agreement*), requires long-term sustainable stewardship to minimize threats of loss or degradation to the wetlands and their integral habitat present on the Property (Conservation Easement Area).

WHEREAS, the Steward agrees to enter into a cooperative stewardship arrangement, whereby, in consideration for receipt of payment from the Permittee as an endowment (as defined below), the Steward agrees to act as a third party in the management of the Conservation Easement Area pursuant to an approved Management Plan.

WHEREAS, the Permittee, Grantor (if other than the Permittee), the DEQ, and the Steward, all have mutual goals with respect to the permanent protection of the functions and values of the wetlands within the Conservation Easement Area.

Conservation Values:

The Property possesses ecological values of prominent importance to the public. These values are referred to as the "Conservation Values" in this Easement.

(Select from the following conservation values that pertain to the site, add additional specific values, delete those Conservation Values that do not apply. Delete titles if desired)

WILDLIFE VALUES:

- The Property is home to many species of wildlife, including: *(INSERT)*.
- The Property provides a vital link to wetlands and upland wildlife habitat and serves as a connection for wildlife movement and creates a natural "greenway" or ecological corridor *(INSERT AREA)*.
- The Property contains significant natural habitat in which fish, wildlife, and plants thrive in a natural state.
- The Property contains sustainable habitat for many plants, birds, fish, and terrestrial animal species.
- A diversity of plant and animal life are found on the Property in an unusually broad range of habitats for a property of its size.
- The Property contains habitat for rare, endangered, or threatened species of animals, fish, plants, or fungi, including: *(INSERT SPECIES. Cite whether threatened or endangered and if in the State of Michigan or federal)*.
- The Property contains natural wetland areas that provide habitat for aquatic invertebrates, reptiles, amphibians, and aquatic and/or emergent vegetation.

ECOLOGICAL HABITAT:

- Valued *(INSERT TYPE)* Wetlands, as described in Wetlands Protection, Part 303, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.30301 et seq. are present on the Property. These wetlands provide valuable public benefits such as: *(INSERT BENEFITS)*.
- The Property contains natural areas that represent high quality examples of terrestrial or aquatic communities *(INSERT)*.

- The Property provides an upland buffer zone that is critical to the wetland habitat:
- The Property is characteristic of *(INSERT)*. Its dominant vegetation is *(INSERT)* interspersed with *(INSERT other habitats, streams, important natural features)*. These plant communities are in a relatively natural and undisturbed condition and support the range of wildlife species found in these habitat types.
- The property provides valued native forest land, which includes diverse native species, trees of many age classes and structural diversity, including a multi-story canopy, standing dead trees, and downed logs.

WATERSHED PROTECTION:

- The Property provides important natural land within the *(INSERT)* watershed. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water resources for the *(INSERT)* area.
- The Property includes the *(INSERT)* feet of frontage on the *(INSERT)* (river, stream, lake).
- The Property has a significant amount of undeveloped frontage on the banks/shore of *(INSERT)*, which is a State-designated Natural River (designated as a Wilderness River, Wild and Scenic River, or Country-Scenic River) under the Natural Rivers Section (Part 305) of the NREPA, MCL 324.30501-30515 et seq., (OR) a State-designated "Blue Ribbon Trout Stream" considered by the Michigan Department of Natural Resources to be one of the "Top Ten" trout streams in Michigan.
- Sections of the property are situated on hillsides with slopes greater than 20% that are adjacent to or in close proximity to *(INSERT BODY OF WATER OR STREAM)* and the vegetated slopes would be highly susceptible to erosion damage and accelerated storm water runoff that could adversely affect water quality if the trees or other plants were removed.

ADJACENT TO PROTECTED LANDS:

- The Property lies in close proximity to the following protected properties, which similarly preserve the existing natural habitat: *(INSERT)*.
- This Easement protects a natural area that supports the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or similar conservation area.

THREATS

- The property is threatened by encroaching development/surrounding land uses/fragmentation that may otherwise expand into the wetlands.*(INSERT)*
- The property is threatened by non-native invasive plant species, including: *(INSERT)*
- The property requires on-going maintenance activities (including: *INSERT*) to preserve the unique characteristics of the site.
- The property is adjacent to land in agriculture/ranching that may otherwise expand into the wetland area.

NOW, THEREFORE, in consideration of the mutual promises, agreements, and undertakings of the parties set forth in this Agreement, the parties agree to as follows:

Terms and Conditions of the Stewardship Agreement:

The Stewardship Agreement

The purpose of this Agreement is to provide long-term stewardship of the Conservation Easement Area to ensure the site will be managed and maintained to preserve the long-term functions and values of the wetlands.

The Agreement shall be framed on the unique aspects of the property described in the Baseline Report (Exhibit C) and address the threats and uses associated with the property that require long-term stewardship as described in the Long-term Management Plan (Exhibit E).

A. Grantor/ Permittee Responsibilities under this Agreement:

1. Permittee shall prepare, or have the Steward prepare, a Baseline Report that documents the current ecological conditions of the Conservation Easement Area. All parties shall have the opportunity to review, and comment on the Baseline Report, which shall be approved by the DEQ.
2. The Baseline Report shall include:
 - a. A description of the physical condition of the Conservation Easement Area as of the date of the initial inspection for the purpose of establishing a baseline against which to compare any future changes to the Conservation Easement Area .
 - b. Maps of the site, a depiction of all existing human-made modifications, a description of significant plant communities (with plant and animal species lists), land use history, distinct natural features, and photographs.
 - c. An assessment of existing uses within and surrounding the Conservation Easement Area and identifying those uses that may affect the ecology of the Conservation Easement Area.
3. After the Baseline Report has been approved, the Permittee, shall prepare, or have the Steward prepare, a Long-term Management Plan. [Presumably, the Short term plan identified in the Staff Direction document has been completed by now. If not, it should be addressed in this document, too.] This plan shall not be used to acquire prior DEQ approval for future plans or activities that may take place in or around the site that may compromise the Conservation Easement Area. The Long-term Management Plan shall include the following details:
 - a. How the Conservation Easement Area shall be managed and used in keeping with the conservation resource values and purposes of the Conservation Easement.
 - b. A vegetation management strategy for controlling nonnative invasive plant species.
 - c. Overall site management required to minimize any threats to the Conservation Easement Area that could have a negative effect on the long-term viability of the Conservation Easement.
 - d. An assessment of existing uses and the maintenance issues associated with existing pathways, trails, structures, and the like.
 - e. A reporting time period
4. The Permittee (with the authorization of Grantor through this Agreement *if applicable*) shall provide and place signs, fences, or other suitable markings along the boundary of the Conservation Easement Area to clearly demarcate the boundary of the Conservation Easement Area, in accordance with the Permit and this Agreement.

5. The _____ (*Grantor / Permittee – select one*) shall pay to the Steward the amount of _____ Dollars (\$) as an endowment toward the Steward's costs for replacing and maintaining signs, preparing a Baseline Report, preparing a management plan, monitoring and managing, (*delete any that do not apply*) the Conservation Easement Area, and for all activities of the Steward under this Agreement (the "Endowment"). The Steward shall place the Endowment in a restricted fund to be used only for the costs of monitoring and stewardship of the Conservation Easement Area as described within this Agreement.

B. Steward – Responsibilities under this Agreement

The Steward shall have the following rights, responsibilities and obligations with respect to the Conservation Easement and the Conservation Easement Area.

1. The Steward shall have the right to enter the Conservation Easement Area at reasonable times on reasonable notice to the Grantor to monitor the Conservation Easement Area and perform other functions allowed or required by this Agreement (Exhibit D). The Steward may not, however, interfere with Grantor's use and quiet enjoyment of the Property, and the Steward shall not interfere with Grantor's business operations while exercising its rights under this Agreement.
2. The Steward shall have no right to permit others to enter the Conservation Easement Area. However, upon the prior written consent of Grantor, and at Grantor's sole and absolute discretion, the Steward may invite small groups of naturalists, scientists, students, or the Steward's members to enter the Conservation Easement Area for educational or scientific purposes under the Steward's supervision.
3. If the Grantor has not provided a Baseline Report for the site, the Steward shall conduct an initial inspection of the Conservation Easement Area and prepare a report that describes the physical condition of the Conservation Easement Area as of the date of said inspection for the purpose of establishing a baseline against which to compare any changes to the Conservation Easement Area in the future. The Baseline Report must be accepted in writing by Grantor and the DEQ.
4. If the Steward did not prepare the Baseline Report, the Steward shall have the right to review the Baseline Report and conduct an initial inspection of the site to ensure that the Baseline Report documents the true condition of the Conservation Easement Area. Any changes to the Baseline Report shall be mutually agreed upon by all three parties.
5. The Steward shall create a Long-term Management Plan that details the Steward's goals and actions necessary to manage the Conservation Easement Area. The Long-term Management Plan shall not impose any obligations or restrictions upon Grantor in excess of or inconsistent with those provided for in the Permit and Conservation Easement. The Long-term Management Plan shall be approved in writing by Grantor and the DEQ.
6. The Steward shall have the right and the obligation to inspect the Conservation Easement Area at least one (1) time per year to document the condition of the Conservation Easement Area as compared to the Baseline Report. The Steward shall conduct the inspections on a date and at a time acceptable to both the DEQ and Grantor and shall provide Grantor and the DEQ with written notice no less than fifteen (15) days prior to the proposed inspection date. Grantor and the DEQ shall have the right to participate in such inspection. The Steward shall prepare and provide a copy of the annual monitoring report to Grantor and the DEQ.

7. The Steward (or Grantor if applicable) shall be responsible for maintaining and replacing signs or other suitable markings along the boundary of the Conservation Easement Area, in accordance with the Permit and this Agreement.
8. The Steward shall perform the ecosystem management of the Conservation Easement Area in accordance with the Management Plan, this Agreement, and the Conservation Easement.
9. The Steward shall not initiate work in the Conservation Easement Area except as authorized under the Permit, the Conservation Easement, the approved Long-term Management Plan, or this Agreement, and only with the consent of the Grantor and the DEQ.
10. The Steward shall, as part of its duties, work cooperatively with the Property owner and adjacent property owners to resolve any general compliance issues. Those issues that cannot be resolved informally or involving more than minor violations of the Conservation Easement, or that may be beyond Grantor's control, but are affecting the Conservation Easement, shall be referred to the DEQ.
11. The Steward shall report significant complaints and any actual or threatened violations of the Conservation Easement to the DEQ. DEQ will exercise its enforcement authority under the Conservation Easement to prevent or correct such violations. The Steward shall have no authority to enforce any of the provisions of the Conservation Easement.
12. All stewardship funds shall be held separately from other Steward funds. These funds shall be held with the stipulation that should the Steward fail to meet its obligations as a land Steward or is no longer able to manage the Conservation Easement Area, the remaining principal and any interest accrued shall be provided to the DEQ for transfer to an approved qualified organization for stewardship activities associated with the Conservation Easement Area.
13. Should the Steward fail to meet its obligations under this Agreement, the DEQ shall provide a written Notice Of Termination for Default to the Steward identifying all appropriate and necessary corrective actions and shall allow 30 days from the date of the Default Notification, or a mutually agreed upon schedule, for the Steward to comply with the terms and obligations of this Agreement. Failure of the Steward to comply with this Agreement or any Notice of Termination for Default from the DEQ will result in the stewardship funds and any accrued interest being forfeited to the DEQ.

C. DEQ Responsibilities

1. The DEQ shall review the Baseline Report and the Management Plan. DEQ retains final approval of these documents.
2. The DEQ shall exercise its enforcement authority under the Conservation Easement to prevent or correct violations that may compromise the Conservation Easement Area.
3. The DEQ shall review annual reports prepared by the Steward to ensure the Steward's goals and implementation actions in managing the ecosystems of the Conservation Easement Area are met.
4. DEQ shall oversee Steward's stewardship obligations to ensure Steward is meeting goals and objectives of this Agreement.
5. DEQ shall record this document with the Conservation Easement Agreement.

D. General Terms

1. This Agreement does not grant or convey to the Steward, the DEQ or any other person or entity any right to possession or use of the Conservation Easement Area except as expressly provided herein.

2. This Agreement is binding upon, and inures to the benefit of the parties and their successors and assigns. If and when the Conservation Easement Area is transferred to a Future Owner, the Steward shall continue to have the right to enter the Conservation Easement Area at reasonable time on reasonable notice to monitor the Conservation Easement Area and perform other functions allowed or required by this agreement. Notwithstanding the foregoing to the contrary, in the event the Conservation Easement is extinguished or terminated, then this Agreement shall also terminate and be of no further force and effect without any further action by any party to this Agreement. In this case, the Steward shall transfer all remaining funds in the endowment for this site to the property owner.

3. This Agreement, the Conservation Easement, and the DEQ permit set forth the entire agreement of the parties with respect to the subject matter hereof, and supersede all prior or contemporaneous discussions, understandings and agreements related thereto. No amendment, alteration or modification of this Agreement shall be valid and binding unless in writing and signed by all parties hereto.

4. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

5. To the extent there is any conflict or inconsistency between this Agreement (including any plans and reports prepared hereunder) and the Conservation Easement or the Permit, the terms and conditions of the Conservation Easement or Permit shall control and be binding on the parties, and shall supersede any conflicting or inconsistent terms in this Agreement.

6. For purposes of notices or any other writing permitted or required to be given under this Agreement, such notice shall be personally delivered or sent by first class mail, certified mail, or delivery by overnight courier service to the parties at the following addresses, as may be changed from time to time by notice hereunder being provided to the other parties:

If to the Steward:

Name and address of Steward

Attention: _____

If to Grantor:

Name and address of Grantor

Attention: _____

If to Permittee:

Name and address of Permittee

Attention: _____

If to DEQ:

Michigan Department of Environmental Quality
Water Resources Division
Constitution Hall, 2nd Floor South
P.O. Box 30458

Lansing, Michigan 48909-7958
Attention: Conservation Easement Coordinator

If to the DEQ- District:

Michigan Department of Environmental Quality
Address of District Office

LIST OF EXHIBITS

- Exhibit A – Permit
- Exhibit B – Recorded Conservation Easement
- Exhibit C- Baseline Report
- Exhibit D – Legal access – Conservancies and agents
- Exhibit E – Management Plan

In Witness Whereof, the parties have executed this Agreement on the date first above written.

GRANTOR:

Signature: _____

Type/Print Grantor's Name

Title (if signing on behalf of an organization)

Organization Name (if signing on behalf of an organization)

STATE OF MICHIGAN }
COUNTY OF _____ } SS

IF SIGNING ON BEHALF OF AN ORGANIZATION, THIS MUST BE COMPLETED:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, (name[s]) the _____, (title) of _____ (Organization name) a _____, (state) corporation, partnership, municipality, or limited liability company (circle one), on behalf of the organization.

(Signature of Notary Public)

(Typed or Printed name of Notary Public)

Acting in: _____ County, Michigan

My Commission is in: _____ County, Michigan

My Commission Expires: _____

(OR) IF SIGNING AS AN INDIVIDUAL OR MARRIED PERSON, THIS MUST BE COMPLETED:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
by _____, (name[s]) _____ (marital
status).

(Signature of Notary Public)

(Typed or Printed name of Notary Public)

Acting in: _____ County, Michigan

My Commission is in: _____ County, Michigan

My Commission Expires: _____

Signature: _____

Title (if signing on behalf of an organization

STATE OF MICHIGAN }
COUNTY OF _____ } ss

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, (name[s]) the _____, (title) of _____ (Organization name) a _____, (state) corporation, partnership, municipality, or limited liability company (circle one), on behalf of the organization.

(Typed or Printed name of Notary Public)

My Commission Expires: _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, (name[s]) _____ (marital status).

My Commission Expires: _____

STEWARD:

Signature: _____

Type/Print Name

Title

Organization Name

STATE OF MICHIGAN }
 } ss
COUNTY OF _____}

IF SIGNING ON BEHALF OF AN ORGANIZATION, THIS MUST BE COMPLETED:

The foregoing instrument was acknowledged before me this ____ day of _____,
20__ by _____, (name[s]) the _____, (title)
of _____ (Organization name) a _____, (state)
corporation, partnership, municipality, or limited liability company (circle one), on behalf of the
organization.

(Signature of Notary Public)

(Typed or Printed name of Notary Public)

Acting in: _____ County, Michigan

My Commission is in: _____ County, Michigan

My Commission Expires: _____

GRANTEE:

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION

William Creal, Chief

STATE OF MICHIGAN}
 } ss
COUNTY OF INGHAM}

The foregoing instrument was acknowledged before me this ____ day of _____,
20__ by William Creal, Chief, Water Resources Division, State of Michigan, on behalf of the
Department of Environmental Quality.

(Signature of Notary Public)

(Typed or Printed name of Notary Public)

Acting in: Ingham County, Michigan

My Commission Expires: _____

FORM DRAFTED BY:

The Honorable William Schuette,
Attorney General
Department of Attorney General
Environment, Natural Resources, and
Agriculture Division
P.O. Box 30458
Lansing, Michigan 48909

AFTER RECORDING RETURN TO:

**Michigan Department of
Environmental Quality
Water Resources Division
Constitution Hall, 2nd Floor South
Lansing, Michigan 48909-7958**

(March 17, 2011)